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Reply to the Santa Barbara office.

January 8, 2016

File No. 136401

VIA ECF

Hon. Charles R. Breyer
United States District Court
450 Golden Gate Avenue
San Francisco CA 94102

Re: Letter in Support of Application by Marc Seltzer for Lead Counsel
In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and
Products Liability Litigation (MDL No. 2672)

Dear Judge Breyer,

In accordance with the Court's Pretrial Order No. 2, I respectfully submit this letter in support of the appointment of Marc Seltzer and Susman Godfrey LLP as Plaintiffs' Lead or Co-Lead Counsel, or, in the alternative, as a member of the Plaintiffs' Steering Committee in the above-referenced multidistrict litigation. My support is also indicated in an exhibit to Mr. Seltzer's application to this Court.

My law firm — Foley Bezek Behle & Curtis, LLP — along with its co-counsel Hellring Lindeman Goldstein & Siegal, LLP, filed a class action complaint against Volkswagen in the United States District Court for New Jersey, titled *Federico Behncke et al. v. Volkswagen Group of America*, Case No. 15-07176. I have closely followed the numerous other putative class action cases filed against Volkswagen and the MDL proceedings, and I am aware of the numerous causes of action pleaded in those cases.

I have personal experience working as co-counsel with Marc Seltzer and Susman Godfrey LLP in two complex class litigation cases: *In Re Structured Settlement Litigation*, California Superior Court for the County of Los Angeles, Case No. Case No. BC 244111, and *Schuelin et al. v. Petroleum Development Corp. et al.*, Case No. SACV 11-1891 (C.D. Cal.).

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The *In Re Structured Settlement Litigation* was a certified class action on behalf of participants who entered into structured settlements which ultimately failed, against numerous large institutional defendants including Wells Fargo Bank, Merrill Lynch, and Bankers Trust Company of New York. Initially there were three competing putative class actions filed in the *Structured Settlement Litigation* and numerous individual complaints which were consolidated in the Complex Litigation Department of the Los Angeles Superior Court.

Through Mr. Seltzer's efforts, the attorneys for the three separate competing class actions in the *In Re Structured Settlement Litigation* agreed to work collaboratively for the benefit of the class. After three years of highly contested litigation, the court approved a settlement in excess of \$100 million dollars. Mr. Seltzer, by force of his intellect and experience in litigating class actions, emerged as the undisputed lead class counsel in the *Structured Settlement Litigation* by consent of the other plaintiffs' class counsel. Mr. Seltzer took the lead on behalf of all class counsel in arguing the critical pretrial motions in that case. It is Mr. Seltzer's proven ability to get competing plaintiffs' class counsel to work collaboratively for the benefit of the class members which makes him highly qualified to serve as lead counsel or co-lead counsel in the Volkswagen MDL litigation.

The *Schuelin* litigation was a complex securities class action case against a large publicly traded company presided over by District Court Judge Andrew Guilford of the Santa Ana Division of the United States District Court for the Central District of California. I served as co-counsel with Mr. Seltzer in the *Schuelin* litigation and had the opportunity to again observe Mr. Seltzer's ability to captain a team on over a dozen plaintiffs' lawyers in obtaining a \$37 million dollar settlement.

Based on my personal experience working with Mr. Seltzer and Susman Godfrey LLP, I know that the Susman is a nationwide firm that has a strong bench of very capable trial attorneys in numerous offices that work very well together despite being in separate offices. The Susman firm demonstrated in the *Structured Settlement Litigation* and the *Schuelin* action the ability and willingness to commit as many experienced lawyers as were needed and the financial resources to pay millions of dollars in costs to match the resources of the large national defendants and the nationwide firms that represented the defendants in those two cases.

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In summary, based on my forty years of litigating complex litigation cases, it is my belief that Marc Seltzer and Susman Godfrey meet all the criteria set forth in FRCP 23(g)(1)(A) to be appointed as lead class counsel, co-lead counsel, or as a member of a Plaintiffs' Steering Committee in this complex litigation case.

Respectfully submitted,

Foley Bezek Behle & Curtis, LLP

/s/ Thomas G. Foley, Jr.

THOMAS G. FOLEY, JR.

cc: All Counsel (via ECF)